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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,315	11/06/2003	Germaine Zocchi	F1588	7977

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EXAMINER
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MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/702,315

Applicant(s)

ZOCCHI, GERMAINE

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 2 is objected to because of the following informalities: In instant claim 2, the second occurrence of the Markush Group "nonionic surfactants" should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Oldenhove, U.S. Patent No. 5,922,693.

Oldenhove, U.S. Patent No. 5,922,693, discloses with sufficient specificity a cleaning composition comprising 1-10% by weight of an anionic surfactant and an ethoxylated nonionic surfactant (see col. 7, lines 27-31), and 0.2-10% by weight of polyhexamethylene biguanide hydrochloride (see col. 7, lines 32-34 and col. 8, lines 23-25), per the requirements of the instant invention. Therefore, instant claims 1-2 are anticipated by Oldenhove, U.S. Patent No. 5,922,693.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahieu et al, U.S. Patent No. 6,475,976.

Mahieu et al, U.S. Patent No. 6,475,976, discloses an antibacterial composition comprising 1.5% by weight of dipropylene glycol N-butyl ether, 0.09-0.21% by weight of sodium lauryl sulfate, 0.06-0.09% by weight of polyhexamethylene biguanide hydrochloride, 1.5-3% by weight of propylene glycol monobutyl ether, and water (see Examples 1A-1C), per the requirements of the instant claims. Therefore, instant claims 1-2 are anticipated by Mahieu et al, U.S. Patent No. 6,475,976.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahieu et al, U.S. Patent No. 6,465,412.

Mahieu et al, U.S. Patent No. 6,465,412, discloses with sufficient specificity an antibacterial composition comprising 0.1-5% by weight of a mixture of anionic

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surfactants and nonionic surfactants, 0.01-5% by weight of polyhexamethylene biguanide hydrochloride, and water (see col. 2, lines 15-33), per the requirements of the instant claims. Therefore, instant claims 1-2 are anticipated by Mahieu et al, U.S. Patent No. 6,465,412.

6. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Mahieu et al, U.S. Patent No. 6,479,044.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Mahieu et al, U.S. Patent No. 6,479,044, discloses an antibacterial solution comprising 0.2% by weight of polyhexamethylene biguanide hydrochloride, 0.16% by weight of sodium lauryl sulfate, 0.1% by weight of Dobanol 91-5 (i.e. a nonionic surfactant), and water (see Example 5), per the requirements of the instant claims. Therefore, instant claims 1-2 are anticipated by Mahieu et al, U.S. Patent No. 6,479,044.

7. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Mahieu et al, U.S. Patent No. 6,596,681.

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The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Mahieu et al, U.S. Patent No. 6,596,681, discloses an antibacterial composition comprising 1.5% by weight of dipropylene glycol N-butyl ether, 0.09-0.21% by weight of sodium lauryl sulfate, 0.06-0.09% by weight of polyhexamethylene biguanide hydrochloride, 1.5-3% by weight of propylene glycol monobutyl ether, and water (see Examples 1A-1C), per the requirements of the instant claims. Therefore, instant claims 1-2 are anticipated by Mahieu et al, U.S. Patent No. 6,596,681.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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9. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,922,693. Although the conflicting claims are not identical, they are not patentably distinct from each other because Oldenhove, U.S. Patent No. 5,922,693, claims a similar liquid cleaning composition comprising A) 1-10% by weight of an anionic surfactant and an ethoxylated nonionic surfactant, and B) 0.2-10% by weight of polyhexamethylene biguanide hydrochloride (see claims 1-7 of Oldenhove, U.S. Patent No. 5,922,693), as required by applicant in the instant claims.

10. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,475,976. Although the conflicting claims are not identical, they are not patentably distinct from each other because Mahieu et al, U.S. Patent No. 6,475,976, claims a similar antibacterial composition comprising 0.01-5% by weight of a sulfate anionic surfactant, 0.01-2% by weight of polyhexamethylene biguanide hydrochloride, water, and a nonionic cosurfactant including a mixture of dipropylene glycol N-butyl ether and propylene glycol monobutyl ether (see claims 1-9 of Mahieu et al, U.S. Patent No. 6,475,976), as required by applicant in the instant claims.

11. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,465,412. Although the conflicting claims are not identical, they are not patentably distinct from

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each other because Mahieu et al, U.S. Patent No. 6,465,412, claims a similar antibacterial composition comprising 0.1-5% by weight of a mixture of anionic surfactants and nonionic surfactants, 0.01-5% by weight of polyhexamethylene biguanide hydrochloride, and water (see claims 1-2 of U.S. Patent No. 6,465,412), as required by applicant in the instant claims.

12. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,479,044. Although the conflicting claims are not identical, they are not patentably distinct from each other because Mahieu et al, U.S. Patent No. 6,479,044, claims a similar antibacterial composition comprising 0.01-10% by weight of an ethoxylated nonionic surfactant, 0.01-5% by weight of an anionic surfactant, 0.01-2% by weight of polyhexamethylene biguanide hydrochloride, and water (see claims 1-2 of U.S. Patent No. 6,479,044), as required by applicant in the instant claims.

13. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,596,681. Although the conflicting claims are not identical, they are not patentably distinct from each other because Mahieu et al, U.S. Patent No. 6,596,681, claims a similar antibacterial composition comprising 0.01-10% by weight of a sulfonate or sulfate anionic surfactant, 0.01-2% by weight of polyhexamethylene biguanide hydrochloride, water, and a nonionic cosurfactant including a mixture of dipropylene glycol N-butyl



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ether and propylene glycol N-butyl ether (see claims 1-10 of Mahieu et al, U.S. Patent No. 6,596,681), as required by applicant in the instant claims.

14. Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/688,635. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/688,635 claims a similar antimicrobial composition comprising 0.01-5% by weight of polyhexamethylene biguanide hydrochloride, 0.01-5% by weight of an anionic biopolymer, water, and 0.01-5% by weight of a surfactant, including mixtures of anionic surfactants and nonionic surfactants (see claims 1-3 of copending Application No. 10/688,635), as required by applicant in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/224,692. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/224,692 claims a similar antimicrobial composition comprising 0.01-2% by weight of polyhexamethylene biguanide hydrochloride, 0.01-5% by weight of an anionic surfactant, water, and 0-1% by weight of an ethoxylated nonionic surfactant (see claims

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1-4 of copending Application No. 10/224,692), as required by applicant in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk  
February 15, 2005

*Brian P. Mruk*

Brian P. Mruk  
Primary Examiner  
Tech Center 1700